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STATE OF IOWA • DEPARTMENT OF PUBLIC INSTRUCTION

GRIMES STATE OFFICE BUILDING • DES MOINES, IOWA 50319

ROBERT D. BENTON Ed.D., STATE SUPERINTENDENT  
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DECLARATORY RULING #31  
(Cite as 1 D.P. I. Dec. Rul. 74)

February 28, 1983

Mr. Ken Varner  
624 13th Place  
Camanche, Iowa 52730

Dear Mr. Varner:

On February 2, 1983, you filed a "Petition for Declaratory Ruling" in my office. In the Petition you outline a factual situation wherein 47 families residing in Clinton County, Iowa, send their children to attend school at a nonpublic school in western Illinois. The Petition states that the school of attendance is the nearest school available to members of that religious denomination, is located about one mile within the Illinois border, is fully accredited by the North Central Association of Colleges and Schools, is a "registered nonpublic school" in the state of Illinois, and is located in an Illinois school district which is contiguous to the three Iowa school districts in which the families reside. The Petition also states that all transportation to school provided the students, except the one mile into Illinois, occurs in the state of Iowa. Based on those facts, your Petition presents the following question:

May Iowa residents sending their children to the nearest Evangelical Christian School, located in Fulton, Illinois, a contiguous school district, receive payment for claims for non-public school transportation, under Section 285.2, The Code, for miles traveled in the Iowa School Districts.

My response to your question is in the negative. State statutes containing provisions regarding reimbursement for transportation of nonpublic students to school are contained in Chapter 285, The Code 1981. The relevant portions of those statutes read as follows:

285.1 When entitled to state aid.

1. The board of directors in every school district shall provide transportation, either directly or by reimbursement for transportation, for all resident pupils attending public school, kindergarten through twelfth grade, except that:

a. Elementary pupils shall be entitled to transportation only if they live more than two miles from the school designated for attendance.

b. High school pupils shall be entitled to transportation only if they live more than three miles from the school designated for attendance.

\* \* \* \* \*

14. Resident pupils attending a nonpublic school located either within or without the school district of the pupil's residence shall be entitled to transportation on the same basis as provided for resident public school pupils under this section. . . . In the case of nonpublic school pupils the term "school designated for attendance" means the nonpublic school which is designated for attendance by the parents of the nonpublic school pupil.

\* \* \* \* \*

285.2 Payment of claims for nonpublic school pupil transportation. Boards of directors of school districts shall be required to provide transportation services to nonpublic school pupils as provided in section 285.1 when the general assembly appropriates funds to the department of public instruction for the payment of claims for transportation costs submitted by the school district.

There is appropriated from the general fund of the state to the department of public instruction funds sufficient to pay the approved claims of public school districts for transportation services to nonpublic school pupils as provided in this section.

\* \* \* \* \*

285.16 "Nonpublic school" defined. As used in this chapter, the term "nonpublic school" means those nonpublic schools approved by the department of public instruction as provided in section 257.25 and nonpublic institutions which comply with state board of public instruction standards for providing special education programs.

Clearly, under these sections, the local school district of residence has a legal responsibility to provide transportation, through reimbursement or otherwise, to resident students attending "nonpublic schools" located within or without their boundaries, and clearly, the state has a legal responsibility to reimburse the local district for those costs. It is clear also, that the responsibility of the local district to provide transportation and the state to reimburse the local district for that transportation is conditioned upon resident pupils attending a "nonpublic school." The phrase "nonpublic school" has a particular meaning as it relates to Chapter 285 because the state legislature has provided a specific definition for the phrase in Section 285.16.

Section 285.16 defines a "nonpublic school" as a nonpublic school approved by the department as provided in Section 257.25. That Section refers solely to the approval of education programs of schools located in the State of Iowa. The first sentence of that Section reads as follows:

In addition to the responsibilities of the state board of public instruction and the state superintendent of public instruction under other provisions of the Code, the state board of public instruction shall, except as otherwise provided in this section, establish standards for approving all public and nonpublic schools in Iowa offering instruction at any or all levels from the prekindergarten level through grade twelve. [emphasis added]

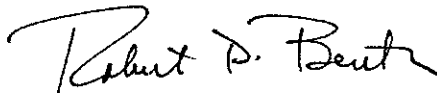
Because Section 257.25 provides only for the approval of public and nonpublic schools in Iowa, a nonpublic school located outside the state of Iowa cannot be considered for approval under that Section. Therefore, it would not be possible for a student attending a nonpublic school outside the state to receive transportation to school provided by the district of residence or for their parents to be reimbursed for such transportation unless the school fell into the second category enumerated in the statutory definition of "nonpublic school."

Since the records of the Department of Public Instruction do not indicate that the Evangelical Christian School of Fulton, Illinois, is a nonpublic institution complying with state board of public instruction standards for providing special education programs, it does not appear that the school in question meets the criteria established in the definition of "nonpublic school" in Section 285.16. In the absence of the particular school in question falling into one of the two categories enumerated in the statutory definition of "nonpublic school," the requirements of Chapter 285 regarding school transportation are inapplicable. A local school district has no legal responsibility to provide school transportation to students attending a school not falling into one of the two enumerated categories, and the state has no legal responsibility to reimburse for such transportation.

Because the question you put forth was stated in permissive (may) rather than mandatory (must) language, I have reviewed the law to determine whether there was any legal authority for a local school district to provide the reimbursement you request or for the state to reimburse parents or school districts for such transportation on a permissive basis. I have found none.

Your Petition cited Section 285.1, subsection 20 as a relevant statutory Section for consideration. I find that Section inapplicable as it applies to the amount a school district charges for out-of-state transportation of persons authorized to be transported under Section 285.1, subsection 21.

Sincerely yours,



Robert D. Benton, Ed.D.

State Superintendent of Public Instruction

RDB:tag-d



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DECLARATORY RULING #31  
 REQUEST FOR RECONSIDERATION

(Cite as I D.P.I. Dec. Rul. 76A)

April 26, 1983

Mr. Ken Varner  
 624 13th Place  
 Camanche, Iowa 52730

Dear Mr. Varner:

Your recent letter indicated that you desired clarification on an issue you feel was created by my response to your request for declaratory ruling. You seem to be under the impression that the Iowa Compulsory Education statutes require that parents send their children to approved schools. That is not the situation.

The Code, Section 299.1, 1983, requires that parents send their children to a public school or provide for "equivalent instruction by a certified teacher elsewhere." If the local public school has determined that the Illinois school your children attend provides "equivalent instruction by a certified teacher," there should be little question that you are not violating the state's laws on compulsory education.

In answer to your specific questions:

1. I will not reconsider the issues presented in your request for declaratory ruling. You have not provided me with any valid reason to do so.
2. If your children are receiving an "equivalent instruction by a certified teacher," you are not in violation of Chapter 299.

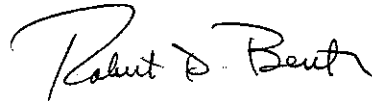
Mr. Varner

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3. Section 257.25 provides that the State Board of Public Instruction approves "public and nonpublic schools in Iowa." The State Board is not authorized to approve out-of-state schools under the provisions of Section 257.25.

If I may be of any further service in clarifying these issues, do not hesitate to ask.

Sincerely yours,

A handwritten signature in cursive script that reads "Robert D. Benton".

Robert D. Benton, Ed.D.  
State Superintendent of Public Instruction

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